

North Dakota
Office of Attorney General



**2001-2003
Biennial Report**

Wayne Stenehjem
Attorney General

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DUTIES AND RESPONSIBILITIES OF THE OFFICE OF ATTORNEY GENERAL

The North Dakota Office of Attorney General is one of twelve independently elected statewide offices in North Dakota and was established at statehood in the 1889 state constitution.

The Attorney General's Office represents and defends the interests of the people of the state of North Dakota by executing the responsibilities given to the North Dakota Attorney General by custom, the North Dakota Constitution, North Dakota and federal case law and statutes enacted by the North Dakota Legislative Assembly and the people of the state of North Dakota. In short, the Attorney General is the chief legal advisor to state government.

The Attorney General has primary authority to act on behalf of the state of North Dakota in several defined areas. For example, the Attorney General has primary responsibility over consumer protection and antitrust, and training and certification of peace officers. The Attorney General may take any legal action deemed necessary to protect the rights of North Dakotans, to defend the actions of state officials, and to ensure public order. In many areas, the Attorney General's Office works concurrently with state's attorneys, county sheriffs and city chiefs of police and other state and federal agencies to carry out the responsibilities of the office. The Office of Attorney General also provides legal representation to all facets of state government, including the governor, state agencies, departments, boards, and commissions.

MAJOR FUNCTIONS:

- Serve as the state's legal adviser by issuing written opinions and legal advice, interpreting statutes and the Constitution.
- Issue opinions to state's attorneys, city attorneys and governing boards interpreting state laws affecting cities, counties and political subdivisions.
- Serve as legal counsel to state agencies, boards and commissions.
- Propose new legislation, support the passage of public interest bills, and issue legal opinions to legislators.
- Represent the state in civil and criminal lawsuits in which the state is an interested party.
- Defend state employees acting within the scope of employment.
- Assist local governments in criminal and drug enforcement investigations.

- Protect the rights of consumers.
- Regulate charitable gambling.
- Serve on several state boards and commissions, including the Industrial Commission, the Board of University and School lands, Public Employees Retirement System, and the Pardon Advisory Board.
- Prevent and control fires and hazardous materials incidents, and inspect certain buildings for fire safety.
- Train various law enforcement officials including police, sheriffs, firefighters, emergency responders, game wardens, highway patrol troopers and gaming personnel.
- License alcoholic beverage retailers; wholesale and retail tobacco product dealers; transient merchants; coin-operated amusement devices operators, lessors, and distributors; fair boards; polygraph operators; charitable gaming operators; gaming manufacturers and distributors; and wholesale fireworks distributors.
- Supervise the operation of the state crime laboratory which is responsible for the analysis of evidence from crime scenes and for conducting toxicology screens in alcohol-related cases.
- Establish and operate the state lottery.

OFFICE ORGANIZATION AND MANAGEMENT

The Office of Attorney General is organized into 11 divisions with specific duties and responsibilities: General Administration, Bureau of Criminal Investigation, Gaming, Finance and Administration, Criminal and Regulatory, Fire Marshal, Civil Litigation, Natural Resources and Indian Affairs, State and Local Government, Consumer Protection and Antitrust, and Information Technology. As a result of legislation passed during the 2003 Legislative Assembly, the office added two new divisions – the North Dakota Crime Laboratory and the North Dakota Lottery.

The Attorney General also has supervisory responsibilities over the North Dakota Racing Commission. The Commission licenses and regulates activities relating to live and simulcast pari-mutuel horse racing and encourages the growth of North Dakota's racing industry. The Commission consists of the chairman and four other members appointed by the Governor. Day-to-day activities are handled by the director of racing who is appointed by the Commission and works closely with the Attorney General's office.

BIENNIUM EXPENDITURES

Total expenditures for the biennium were \$24.6 million. The office had 159.5 authorized FTEs and a salary base of \$13.7 million. Of the total expenditures, \$14.4 million (58%) was general fund monies, \$7.1 million was federal funds (29%), and \$3.1 million (13%) was special funds. A series of charts detailing the breakdown of expenditures for the biennium are included at Appendices A, B, and C.

COSTS ASSOCIATED WITH REPRESENTATION

The costs associated with defending and prosecuting actions on behalf of the state by attorneys in our office was \$1.5 million. This represents a 31% decrease in litigation costs from the 1999-2001 biennium. This was due in part to a decrease in litigation against agencies.

Five of our divisions were responsible for the representations – civil litigation, criminal, state & local government, natural resources, and consumer protection. Information regarding the split of costs between divisions is included at Appendix D. In addition, the Risk Management Division of the Office of Management and Budget spent \$243,289 in legal fees associated with actions against the state. These fees were paid to various special assistant attorneys general and for services provided by our office.

In addition to fees paid for legal actions, the office also monitors the legal fees paid for the services of the 194 special assistant attorneys general. These special assistant attorneys general are either attorneys employed by state agencies as in-house counsel or are private attorneys employed to do legal work for statutorily created boards and commissions. During the 2001-2003 biennium an additional \$3.44 million was paid in either salaries or legal fees for these special assistant attorneys general. Of these fees, an undetermined percentage was expended for litigation-related services. Included within these costs were in-house counsel salaries and private law firm legal fees totaling \$1.72 million for services provided to the North Dakota Workers Compensation Bureau, down from \$1.99 million during the last biennium.

GENERAL ADMINISTRATION

The General Administration Division is responsible for providing personnel support services, coordinating public education and information programs, coordinating relations with the legislative branch, and supporting the efforts of the North Dakota Commission on Drugs and Alcohol.

PUBLIC INFORMATION

In addition to literally thousands of phone calls received by the Office of Attorney General dealing with everything from request for general information to consumer protection complaints, the office addressed numerous questions from citizens in 670 letters and over 800 emails.

During the biennium, the division continued its efforts to provide the public with informative and useful information regarding the Office of Attorney General and state government in general. Particularly popular with educators and persons involved with youth was a brochure explaining the legal consequences of teenage sexual activity. The office also continued to prepare and distribute brochures to the public on various topics including the functions of the Office of Attorney General, Eminent Domain, Landlord/Tenant Rights, and financial information for young people. Additionally, the Office of Attorney General updated its web page by expanding its contents. Many of our information brochures, in addition to several forms, are now accessible to the public on the web page. The web page also includes Attorney General opinions, the Concealed Weapons Manual, and the Open Records and Meetings Manual.

LEGISLATIVE ACTIVITIES

The division also coordinated the Attorney General's legislative agenda. During the 2003 Legislative Session, the office solicited legislative support on several key pieces of legislation directed at combating the escalation of methamphetamine abuse in the state. The new laws provide law enforcement with a growing arsenal of tools and address the following methamphetamine (meth) and other drug-related issues:

- Felony penalties for exposing children to controlled substances, chemical substances or drug paraphernalia;
- A pilot program to evaluate various methods of curtailing the theft of anhydrous ammonia;
- Appropriations to fund two additional agents for narcotics task forces;
- Restrictions on over-the-counter retail sales of certain cough and cold medicines, that are precursors for the manufacture of meth;
- Transfer of the North Dakota Crime Laboratory to the Office of Attorney General;
- Development of a fund to reimburse operations teams assisting rural law enforcement with special law enforcement functions;
- Mandatory sentences when a weapon is involved in an arrest for possession of a controlled substance; and

- Expanding the definition of “deprived child” to include exposure to controlled substances including environments conducive to manufacture of meth.

The Attorney General also facilitated the development of several other key legislative initiatives including:

- Implementation of the North Dakota Lottery; and
- Design and implementation of the “do not call” program that provides North Dakota consumers with a vehicle to prevent unwanted telephone solicitations.

Discussion of other legislation supported by the Office is included within the descriptions of the various divisions of the Office.

NORTH DAKOTA COMMISSION ON DRUGS AND ALCOHOL

In early 2002 at the request of Attorney General Wayne Stenehjem, the North Dakota Commission on Drugs and Alcohol (Commission) was formed by executive order issued by Governor John Hoeven. Chaired by Attorney General Stenehjem, the Commission’s charge was to evaluate substance abuse in North Dakota by a) exploring the interrelationship between substance abuse prevention, education and enforcement programs; b) designing procedures to coordinate resources in the substance abuse area; and c) pursuing avenues to ensure future coordination of resources designed to address substance abuse issues. The Commission issued the Comprehensive Three-Year Plan for Prevention, Treatment and Enforcement (2003 – 2005) which will serve as a guide for professionals over the next three years. The report contained over 35 recommendations, including several regarding the meth-related legislative initiatives outlined above. Another legislative enactment supported by the Commission involved the realignment of mandated coverage for substance abuse treatment with current best practices. The second phase of the Commission’s work began at the end of the 2001-2003 biennium and will continue through the 2005 biennium.

PERSONNEL SUPPORT

Personnel support services staff provides assistance with hiring, retention, evaluations, reclassifications, salary administration, and other personnel issues. During the biennium employees received evaluations under the office-wide evaluation program. The division also initiated and completed reviews for possible reclassification of employees.

The Office of Attorney General provides equal opportunity in employment for all persons. In compliance with federal and state law, the Attorney General continues to file an Equal Employment Opportunity Affirmative Action Plan designed to encourage the participation and advancement of all sectors of North Dakota's population. To increase exposure to minorities, the Office continues to make contacts with the public regarding positions available in the Office of Attorney General through high school and college career fairs and requested appearances.

BUREAU OF CRIMINAL INVESTIGATION

The Bureau of Criminal Investigation (BCI) is the law enforcement division of the Office of Attorney General. The Bureau has full law enforcement and arrest authority throughout the state of North Dakota. By statute, the role of BCI is to assist law enforcement, except when otherwise ordered by the Attorney General. There are three sections within BCI that provide services to local, state, and federal law enforcement agencies: investigative, information services, and administrative services.

The Investigative Section assists local, state, and federal law enforcement agencies in the investigation of crimes across the state of North Dakota. The division has field offices in Bismarck, Devils Lake, Dickinson, Fargo, Grafton, Grand Forks, Jamestown, Minot, Rugby, Stanton, Valley City, Wahpeton, and Williston. The field offices house criminal and narcotics agents who support local law enforcement agencies in criminal investigations. The Information Services Section compiles crime data on a statewide level and serves as the state's central repository for criminal history information. This section also provides training to peace officers and prosecutors, and licenses all peace officers. The Administrative Services Section oversees federal grants for state and local criminal justice agencies, maintains offender registration records, coordinates a number of special projects, and provides day-to-day support functions required for staff located throughout the state.

INVESTIGATIVE SECTION

The Bureau's investigative section assists local and state law enforcement agencies in murder, burglary, cybercrime, sexual assault, theft, and narcotics trafficking investigations statewide. Thirty-four agents assist local authorities in conducting and coordinating their investigations. The agents also provide smaller local law enforcement agencies a mechanism through which they may share resources and personnel.

- **Cybercrime.** The BCI continues to dedicate the efforts of one investigator to coordinate cybercrime investigative activities and provide assistance to local law enforcement. The work demands the full attention of this agent who has the expertise necessary to properly seize unique evidence, analyze system hardware and software, adequately investigate alleged crimes, and provide expert testimony in this very technical area. During the 2001-2003 biennium, the cybercrime investigator became a certified forensic computer examiner and is one of only approximately 300 in the nation to achieve this status.

The investigator has assisted with a wide variety of investigations including narcotics activity, child pornography, child abuse, child molesters, counterfeit documents such as drivers licenses, internet auction fraud, terrorizing, extortion, and identity theft. In addition BCI formed a partnership with local law enforcement

and obtained federal funding for training and equipment. One of the strongest partnerships was with the West Fargo Police Department, where the cybercrime agent, posing as a teenage girl, was contacted by several suspects via the Internet. Successful prosecutions in state and federal court followed the arrest of several of the perpetrators. To meet the growing demand for assistance, a second agent will soon be reassigned to work cybercrime cases.

- ▶ **Multijurisdictional Narcotics Task Forces.** Bureau agents serve as coordinators and consultants for seven of the nine multijurisdictional narcotics task forces in North Dakota. The multijurisdictional task forces provide dedicated investigators in the area of narcotics trafficking. The Bureau and the task forces receive additional assistance and resources to enforce drug laws from the Counter Narcotics Support Division of the North Dakota National Guard Military Support Office. The National Guard provides personnel, logistics, equipment loans, assistance with surplus equipment procurement, mission support, and transportation. They also provide vital law enforcement support through the Recognizance and Interdiction Detachment (RAID) Program. Six pilots and two OH-58 helicopters, equipped with Forward Looking Infrared Radar (FLIR), are dedicated for use in Counterdrug missions, search and rescue, surveillance, or other emergency law enforcement related situations. National Guard intelligence analysts are assigned to BCI headquarters and five multi-jurisdictional task forces.
- ▶ **Methamphetamine.** Methamphetamine (meth) is by far the biggest drug problem challenging North Dakota law enforcement. The number of methamphetamine laboratory seizures in North Dakota in 2002 reached 275 -- triple the number of seizures made in 2001. During the 2001-2003 biennium, 65% of BCI investigations were drug related, and meth was involved in almost two-thirds of those cases.

Most local agencies are unable to respond to these situations without the assistance of the BCI and rely heavily on the BCI to provide its expertise in the area of drug enforcement. The Bureau has teamed with their local law enforcement partners in establishing task forces that are having a significant impact on major trafficking organizations.

The Office of Attorney General continues to participate as a member of the Midwest High Intensity Drug Trafficking Area (HIDTA), a regional network that includes the states of North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri. This partnership provides for regional collaboration, demand reduction, and intelligence activities. The association with HIDTA has provided a tremendous boost to the efforts to combat methamphetamine by allowing the Bureau to maintain additional HIDTA staff including four special agents located throughout the state and two forensic scientists for the North Dakota Department of Health's Crime Lab.

Public Education

The willingness of local residents and businesses to report suspicious drug activity accounts for much of the success of law enforcement efforts in these areas. This is largely due to the efforts of agents throughout the state who are actively involved in their communities educating adults and children about the signs of meth abuse and manufacture. Because they work in the middle of the meth crisis, agents are current on the latest trends and can share anecdotal stories with the public that are extremely effective in proving the danger of this drug. Bureau agents provided community awareness training to 13,400 adults and children in 2002; and 6,944 in 2001. Their credibility and expertise has resulted in ever-increasing demands for public awareness presentations on methamphetamine and labs, as well as other drugs.

A Retailers Meth Watch program was established in 2002 and information was presented to 350 members of the retail community in an effort to educate merchants about suspicious activities and the importance of reporting leads to law enforcement. Anhydrous ammonia is also a necessary ingredient in the manufacture of meth. The rise in anhydrous ammonia thefts is an increasing concern to farmers, law enforcement and health officials, especially in the isolated rural areas favored by meth cooks. During the 2003 Legislative Assembly, the Attorney General encouraged the passage of a study resolution calling for the implementation of a pilot project to evaluate the effectiveness of various methods to curtail the theft of anhydrous ammonia.

Significant Cases

July 2001 - An argument started in an apartment in Wahpeton and moved into the street where the victim was shot three times with a shotgun. The victim survived. One person was convicted of attempted murder, and a second person was convicted of accomplice to attempted murder.

July 2001 - Three Hispanic males were arrested and convicted in federal court after a buy/bust delivery of methamphetamine for \$120,000 in Grand Forks.

December 2001 – Two individuals were involved in an argument in a Valley City apartment. The suspect choked and killed the victim. The suspect was convicted of negligent homicide.

January 2002 – Members of the Gamboa family of Fargo were convicted in federal court of distribution of numerous pounds of meth in the Fargo, Grand Forks, and Bismarck areas. One subject was sentenced to life, while others involved received various other terms.

February 2002 - Suspected child pornography was discovered when a subject's computer was in for repairs, and as a result, the Mandan Police Department was contacted. While imaging the computer, the Bureau's cybercrime agent discovered numerous images of child pornography. The case was presented to the United States Attorney's Office for

prosecution, and the subject received approximately 27 months in federal prison on a plea bargain.

March 2002 – Agents investigated a case in which officers from the Lakota Police Department and Nelson County Sheriff's Department shot and killed a suspect in a domestic violence setting. The state's attorney, who determined the shooting to be justifiable homicide, cleared the officers.

March 2002 – Sargent County Sheriff Chuck Gates was charged with filing false documents, and as a result is no longer the sheriff in that county.

April 2002 – Agents assisted the Fargo Police Department with the investigation of two armed suspects robbing a victim of money and his vehicle in Fargo. Both suspects were apprehended and convicted of the crime.

May 2002 – Attempted murder -- Fargo agents were apprehending a subject who was actively involved in methamphetamine distribution in Fargo and Bismarck. During the arrest, the subject rammed two BCI cars and attempted to run over one agent. The subject was later apprehended in Bismarck.

May 2002 – A clerk of municipal court was convicted of stealing over \$10,000 from fines and court costs.

June 2002 - Agents assisted North Dakota Parole and Probation and the Dunn County Sheriff's Office with a suspected possession, manufacturing, and distribution of child pornography investigation. The Bureau's cybercrime agent imaged the subject's computer and discovered hundreds of images of child pornography and a file-sharing network that lead to other perpetrators overseas. The case was presented to the United States Attorney's Office for prosecution. The subject was indicted by a federal grand jury, plead guilty, and received approximately 135 months in federal prison.

October 2002 – Agents investigated a case where the suspect stole a car in Cando and then committed a home invasion armed robbery in the Starkweather area. The suspect was found guilty of both counts.

November 2002 – The body of Russell Turcotte was found in rural Ramsey County. Dozens of leads have been followed and interviews conducted in three states; however, no arrests have been made. This homicide investigation remains open, and the family has posted a reward for information.

December 2002 – While high on meth, four suspects were caught by a homeowner in progress of a home burglary in Walsh County. The suspects beat the homeowner with a hammer, axe, and other tools and left him for dead. The suspects were apprehended and convicted of attempted murder.

December 2002 – Agents assisted the Burleigh County Sheriff's Department with the processing the crime scene of a homicide in Driscoll. The suspect, who committed burglary, sexual assault, and murder of an elderly victim, was convicted on all counts.

February 2003 – Agents investigated the justified shooting of an individual by a Fargo police officer. The subject, who fled the scene of a domestic disturbance, had been stopped by the Fargo Police Department and threatened the officers with a machete that was taped to his hand. An officer shot and killed the suspect.

February 2003 – The Bureau's cybercrime agent assisted the Beulah Police Department with a suspected possession of child pornography investigation. The subject's computer was imaged and numerous images of child pornography were discovered. The case was presented to the United States Attorney's Office for prosecution; the subject was indicted by a federal grand jury and is awaiting trial.

April 2003 – Agents investigated a triple homicide and one attempted homicide that occurred in a Valley City mobile home park. The suspect was captured two days later and plead guilty to the shootings.

April 2003 - Agents investigated an attempted homicide in the James River Correctional Facility located in Jamestown. Three inmates beat a fourth inmate for approximately 45 minutes before being detected. The victim inmate survived, and the suspect inmates confessed to the beating.

May 2003 – Agents investigated a homicide that occurred in Ellendale. The suspect shot and killed his estranged wife as she slept on a sofa in suspect's house. The suspect, who is a paraplegic, attempted to show he could not commit the crime; however, evidence and recreation of the scene by agents proved the suspect could and did commit the homicide.

June 2003 – During an argument between three brothers in an apartment in Valley City, an individual shot and killed his brother who was standing in the street then shot and killed himself.

INFORMATION SERVICES SECTION

The information services section is the state's central repository for criminal histories and crime statistics. This section maintains information systems that provide law enforcement and other criminal justice agencies with information critical to the protection and safety of the citizens of North Dakota. The following are some of the systems maintained by the section:

- **Uniform Crime Reporting (UCR)/Incident-Based and Summary Reporting** – a statistical system that tracks crime in North Dakota and is a part of a national crime reporting system. Annual reports are prepared and published, and information is provided to law enforcement agencies as well as any persons making requests.

- **Offender Registration System** – a system for registering and tracking sexual offenders and offenders against children. It is part of a national sex offender registration initiative.
- **Criminal History Records System** – a system that compiles records of arrests and prosecutions of individual offenders for use by law enforcement, the courts, and the public. It is interfaced with the FBI's criminal records system and Interstate Identification Index (III).
- **Central Warrant Information System (CWIS)** – a system used by North Dakota law enforcement agencies to communicate information on outstanding arrest warrants for misdemeanor offenses, and to provide access to protection order information.
- **Concealed Weapon Permits** – a system for receiving and processing applications for concealed weapon permits and issuing permits to North Dakota citizens.
- **Automated Fingerprint Identification System (AFIS)** – a system operated as part of a regional program with Minnesota and South Dakota, that allows electronic scanning, transmission, and storage of fingerprint image data to aid in criminal investigations.

Training Section

The training section is responsible for providing field training and assisting with academy training for all law enforcement officers in North Dakota. In the 2001-2003 biennium 242 training programs were presented to 5,126 students. Students in attendance for training sessions represented police and sheriffs' departments, and state and federal agencies.

In addition, the section conducts the licensing and record-keeping functions for the Peace Officer Standards and Training (POST) Board. Members of the POST Board are appointed by the Attorney General and represent all facets of law enforcement, as well as city and county governments. The POST Board enforces minimum standards for the issuance and maintenance of peace officer licenses, including continuing education and weapons qualification requirements.

Criminal History Records

The Bureau received just over \$1 million in the 2001-2003 biennium under the Crime Bill for the Criminal History Records System. This system has undergone extensive automated restructuring with the use of federal grants over the last 15 years. In addition, the National Criminal History Improvement Program (NCHIP) was funded as part of the federal Brady Act. The NCHIP grant provided funding for the systematic improvement of record systems. The NCHIP activities ongoing during the biennium included quality control efforts, upgrading of Automated Fingerprint Identification System (AFIS)

capabilities, linking AFIS and live-scan fingerprinting systems, the acquisition of funds to improve disposition reporting, rewriting the concealed weapon permit computer program, and risk assessment of registered sex offenders.

In addition to major improvements to the criminal history record system, the NCHIP program allowed for the creation of electronic interfaces among criminal history records and other systems such as the offender registration system, CWIS, and the concealed weapon permits.

Concealed Weapon Permits

Concealed weapon permit applications increased steadily during the 2001-2003 biennium. During the biennium, 4,049 permits were issued, with the corresponding permit fees generating revenues of \$101,225. The number of active concealed weapon permits grew by 11%, from 5,342 on June 30, 2001, to 5,920 on June 30, 2003.

Automated Fingerprint Identification System

The Automated Fingerprint Identification System (AFIS) allows law enforcement to compare a single latent fingerprint left at a crime scene with millions of fingerprints contained in an automated file. The program integrates with the Minnesota AFIS installation, which serves as the repository for a regional fingerprint database for the states of Minnesota, North Dakota, and South Dakota. The Bureau scans fingerprint cards obtained from arrests in North Dakota and the AFIS then matches the cards against files in Minnesota, South Dakota and North Dakota. The AFIS system gives North Dakota state-of-the-art technology, which allows law enforcement to:

- **Improve response time.** The time it takes for fingerprints to be searched against the existing file when local law enforcement agencies submit fingerprint cards is dramatically reduced.
- **Improve accuracy in both 10-print and latent identifications.** The benchmark criteria established for this system creates a level of accuracy not matched by human abilities to classify prints when large volumes are handled.
- **Search all applicant and new arrestee fingerprints against a file of unsolved latent prints.** Any new set of fingerprints can be checked against a file of prints taken from unsolved crimes.
- **Search the master fingerprint file for both 10-print and unsolved latent fingerprints.** When a local law enforcement agency makes an arrest, law enforcement personnel can search the master file for a match, or lacking an arrest, they can check the file for a match on the latent print.

Live-scan fingerprint equipment installed in the state's largest jails interfaces with AFIS and allows fingerprint images to be transmitted at booking time, and for booking officers to receive a rapid response regarding any prior arrests of the booking subject.

During the biennium, law enforcement officers throughout the state submitted 205 cases involving latent print examination for burglaries, narcotics cases, thefts, robberies, murders, and arsons. Seven individuals were identified from latent prints in cases where the suspect was unknown or was someone other than the individual suspected by law enforcement. Two cases during this period involved establishing the identity of deceased individuals. In another case, a fingerprint in blood left at the scene of a murder was positively identified to the suspect who was subsequently convicted of murder. An additional case included identifying a robbery suspect from a fingerprint left on a coffee cup.

Domestic Violence Annual Report

In 1996, the first Services Training Officers Prosecutors (STOP) grant was awarded to the Office of Attorney General for collecting, analyzing, and publishing data on domestic violence from several databases in order to produce a report on domestic violence in North Dakota. In 1997, three of the state's four Indian reservations were added to the report. To date, six reports have been issued using 1995 through 2001 data. The 2000 and 2001 data were published in one report in 2002. Grant funds have been received for the 2002 data report.

ADMINISTRATIVE SERVICES SECTION

Offender Registration

During the 2001-2003 biennium, the number of registered offenders increased from 810 on July 1, 2001, to 856 on June 30, 2003. The number of offenders required to register increased from 1,247 to 1,345 during that period. Of the 1,345 required to register, 322 resided out of state.

A risk assessment committee, comprised of treatment, law enforcement, parole and probation, juvenile services, and victim advocates personnel met throughout the biennium to review accumulated data on each registered offender and determine each individual's risk assessment level as low, moderate, or high. To date, 605 assessments have been completed with 76 offenders identified as high risk, 158 as moderate risk, and 371 as low risk. An additional 128 assessments remain to be conducted. Upon completion, the committee will then assess offenders who are either released from the penitentiary, sentenced without serving time, or coming to North Dakota from another state.

The Minnesota Sex Offender Screening Tool – Revised (MNSOST-R) is one of the tools used by the risk assessment committee to determine the risk level of these offenders. It measures an individual's probability of re-offending. During this biennium, we conducted a

validation study of the MNSOST-R which had been previously validated for the state of Minnesota, but had not been validated for use in North Dakota. This study verified that this is a valid tool to be used with North Dakota adult, male sex offenders.

Changes were made to the offender registration statute in the 2003 legislative session which brought the state into compliance with the Campus Sex Crimes Prevention Act Amendment to the Jacob Wetterling Act. Information on sex offenders residing at, enrolled at, or employed by any institution of higher education in the state is forwarded to the law enforcement agencies having jurisdiction in the location of those institutions.

Grants Management

The administrative services section administers several important federal grants providing key funding for state and local law enforcement efforts.

- ▶ **Edward Byrne Memorial State and Local Law Enforcement Assistance Program.** These funds are made available by Congress through the Anti-Drug Abuse Act of 1988 to provide financial assistance to make communities safe and improve criminal justice systems. The Byrne grant funds are awarded by the North Dakota Drug and Violent Crime Policy Board consisting of representatives from law enforcement, corrections, the court system, victim/witness assistance programs, human services, and prosecution. The Board develops the criteria for distribution of funds, reviews applications, and makes grant award recommendations to the Attorney General.

Criteria established by the Board are based on a statewide drug and violent crime strategy focusing on drug and violence prevention and criminal justice system improvements. The awards are distributed to a variety of programs in the areas of enforcement, treatment, crime victim assistance, crime prevention, and corrections.

The Board recommended grants totaling more than \$4.1 million to 87 criminal justice projects including 2 criminal justice information systems, 23 narcotics enforcement initiatives, 34 domestic violence and victim/witness programs, 4 crime prevention and drug education programs, 24 and adjudication, prosecution, training, and treatment programs.

- ▶ **Local Law Enforcement Block Grants Program.** The Local Law Enforcement Block Grants Program provides local government with federal funds to underwrite projects to reduce crime and improve public safety. During the 2001-2003 biennium, a subcommittee of the Drug and Violent Crime Policy Board recommended grants totaling more than \$195,000 to 55 local law enforcement agencies. Funds were awarded to agencies for the enhancement of officer safety and updating communications and computer information systems.
- ▶ **CounterAct Drug and Alcohol Education.** The Office of Attorney General receives a subgrant of the Safe and Drug-Free Schools and Communities Act

managed by the Division of Mental Health and Substance Abuse Services of the North Dakota Department of Human Services to implement a program entitled CounterAct. The Bureau uses the money to pay for officer training and student materials for the agencies involved. The CounterAct program is similar in scope to the D.A.R.E program – both use uniformed officers to present their drug and alcohol education curriculum to students – however, the CounterAct program requires less time commitment. (The CounterAct program consists of a 6-week curriculum and the D.A.R.E. program requires 17 weeks of instruction.)

The CounterAct program has become the primary drug and alcohol education program for many law enforcement agencies in North Dakota. The program also received outstanding support from the communities involved for two reasons. First, the program provides an effective curriculum for drug and alcohol education and second, it allows law enforcement to develop relationships with students and the community. During the 2001-2003 biennium, officers who were certified as CounterAct instructors presented the CounterAct curriculum to 3,516 students and 3,046 parents in the communities they serve.

Crime Prevention Awards

Recognizing the positive impact crime prevention programs have on the welfare of North Dakota citizens, the Attorney General presented annual crime prevention awards to acknowledge and encourage crime prevention projects. The 2001 Community Service/Crime Prevention Program of the Year award was presented to the Grand Forks Police Department, and the 2002 award was given to the Northwest Narcotics Task Force.

GAMING DIVISION

The Office of Attorney General administers, regulates, and enforces charitable gaming activity in North Dakota. Legal games are bingo, raffles, pull tabs, punchboards, sports pools, twenty-one, poker, calcuttas, and paddlewheels. The Gaming Division performs financial and compliance office and field audits, and investigations of gaming organizations, distributors, and manufacturers; ensures that the receipt, control, and disbursement of gaming funds are accurate, and operated according to the law and rules; processes gaming tax returns; collects gaming and excise taxes and monetary fines; issues administrative complaints; conducts criminal history record checks of gaming employees, officers and stockholders of distributors, manufacturers, and Indian casino employees; provides guidance and training to representatives of organizations, distributors, and local law enforcement agencies; writes administrative rules for and assists the State Gaming Commission; and ensures compliance with five tribal-state casino gaming compacts.

OVERVIEW OF THE GAMING INDUSTRY

The gaming industry has experienced phenomenal growth in size and complexity since its inception in April 1977 – 26 years ago. In the 2001-2003 biennium, there were 1,117 active gaming sites, \$544.5 million was wagered, \$33 million was raised for charitable uses, and \$20.5 million was paid to the state in gaming and pull tab excise taxes. Since 1977, \$394 million has been raised for charitable uses. An overview of the gaming activity for the fiscal years ended June 30, 2002, and June 30, 2003, is included at Appendix E.

SIGNIFICANT ACCOMPLISHMENTS

Gaming Rules

Continual revision of the gaming rules has clarified provisions and addressed statutory changes. The rules were printed in a small-size booklet and on the Internet. The rules were developed through a cooperative effort among the Gaming Advisory Board, State Gaming Commission, and Office of Attorney General.

Legislative Changes

The 2003 Legislative Assembly enacted several changes to the state's gaming statutes. The changes to statutes relating to gaming included:

- A provision allowing an organization to raffle a live horse, in addition to live bison, sheep, pigs, beef and dairy cattle that may already be raffle prizes. A donated animal may now have a value greater than \$1,000.
- The creation of an exemption of sales or use taxes on tangible personal property and excise taxes on motor vehicles if the property or vehicle is purchased by a charitable organization to be awarded as a raffle prize.
- The primary merchandise prize value issued under a local permit or charity local permit was increased from \$1,000 to \$2,500. Also total prizes of all games that may be conducted under a permit was increased from \$6,000 to \$12,000 per year.
- A provision enabling the Attorney General to allow organizations only conducting raffles or calcuttas in two or more cities or counties to annually apply for a consolidated license, rather than separate licenses, and remit a \$150 fee for each jurisdiction.
- A provision allowing the Attorney General to expand the duties of an employee of an alcoholic beverage establishment in providing limited assistance to an organization in the conduct of sports pools and prize boards.

- A provision allowing organizations to use “fifty-cent” metal coins rather than similar value clay or plastic chips.
- A provision allowing organizations when more than one 21 table is active at a site to set a minimum bet limit on no more than one-half of the active tables.
- A provision enabling the Attorney General’s office to allow an organization to pay delinquent tax, interest, and penalty on an installment plan.
- An amendment reducing the annual license fee on a manufacturer of pull tab dispensing devices from \$4,000 to \$1,000.
- A provision amending the Attorney General’s authority to either require or prohibit an organization from paying a bingo or raffle prize to a player on a dispute or based on a factual determination.

Local Law Enforcement Grants

The Legislature appropriated \$629,000 for local gaming enforcement grants for the 2001-2003 biennium. A statutory change discontinued the grant application process used during the previous biennium and amended the gaming law to pay 3% of the gaming and excise taxes paid, or \$78,625 per quarter, whichever was less. The amount a city or county receives is proportionate to the level of gaming activity within that city or county to the statewide activity. However, a city or county must have a certain level of activity each quarter to receive funds. The law provides that if the allocated amount to a city or county is less than \$200 per quarter, the amount is not disbursed but is placed back in the pool and reallocated to cities and counties that would receive \$200 or more per quarter. The total enforcement grants awarded during the 2001-2003 biennium were \$615,793.

The 2003 Legislature slightly reduced funding for local gaming enforcement grants for the 2003-2005 biennium by \$12,000, or a 2% reduction. The maximum appropriation is 3% of the gaming and excise taxes paid, or \$77,125 per quarter (\$617,000 for the biennium), whichever is less.

Education Program

The division’s education program trains employees and volunteers from organizations involved in gaming activities on laws, rules, recordkeeping, internal control, and tax return preparation. Ten training sessions were conducted in five major cities. A total of 387 people representing 236 organizations and 2 distributors attended. One-on-one training was provided to 88 people representing 44 organizations, and post audit training was provided to 62 people representing 16 organizations.

The office also publishes the “*Gaming Update*” quarterly newsletter. The newsletter is distributed to organizations, distributors, manufacturers, and members of the Gaming

Advisory Board and State Gaming Commission. The newsletter includes statistics on gaming, interpretation and updates of law and rules, calendar of events, and other special topics.

Audit Program

The comprehensive financial and compliance audit programs for conducting audits of organizations continues to be refined. The audit programs include complex standard audit procedures, and tailored compliance and internal control questionnaires. Twenty comprehensive field audits were conducted. Internal control manuals of several organizations were also evaluated and approved.

Gaming Tax Return Processing System

A major project of rewriting the tax return and quarterly report computer processing system was completed during the biennium. A number of quarterly reports remain to be processed but the division should be current with all processing by December 31, 2003. The new system creates valuable databases of information and integrates the Licensing Section with the Gaming Division for optimum efficiency.

Significant Cases

- The division conducted an audit of Bismarck AmVets Post # 9, which resulted in the investigation of the largest embezzlement case in the history of charitable gaming. The former gaming manager plead guilty to *Theft of Property* (Class B Felony) and is serving 5 years of a 10-year sentence and was ordered to make restitution in the amount of \$650,000. The division collected \$177,171 from the Post, which represents past due gaming and excise taxes of \$153,248, interest of \$13,923, and penalty of \$10,000.
- The division assisted with the investigation of an embezzlement case involving the Maddock American Legion. The former bookkeeper plead guilty to *Theft of Property* (2 cases, Class C Felonies) and served 90 days of a three year sentence and was ordered to make restitution in the amount of \$9,000.
- The division provided assistance to the Racing Commission with an investigation of Racing Services, Inc., the state's sole service provider of simulcast horse track betting. The company has admitted to under-reporting the racing handle by nearly \$100 million from October 2002 through April 2003 and currently owes the state approximately \$6.5 million in back taxes.
- In October 2002, assistance was provided to the Bismarck Police Department in the seizure of 54 illegal slot machines from a vendor marketing them at the Bismarck Civic Center. The machines, owned by an out of state vendor, were purchased from overseas casinos and advertised through a transient merchant

sale. The machines have been forfeited and will be destroyed by the Bismarck Police Department.

- The division assisted with two separate investigations involving illegal wagers placed over the Internet. The Cass County State's Attorney's Office charged and successfully prosecuted a North Dakota resident for conducting illegal wagers on sporting events using on-line sports betting sites. The other investigation involved a person who previously resided in North Dakota and has since moved to Minnesota but was placing illegal wagers in both states using on-line casinos. The Clay County State's Attorney along with the US Attorney are reviewing this case for possible charges.

Indian Gaming

The State of North Dakota has entered into tribal-state casino gaming compacts with the five Indian tribes. The compacts allow the tribes to operate reel and video slot machines, conduct craps, keno, Indian dice, twenty-one, sports and calcutta pools, poker, paddlewheels, roulette, pari-mutuel and simulcast betting, raffles, punchboards, and pull tabs on reservation land. The basic provisions of all the compacts are the same.

Six Indian casinos were operating during the biennium – two casinos operated on the Turtle Mountain Reservation, one on the Spirit Lake Nation Reservation, one on the Fort Berthold Reservation, one on the Standing Rock Reservation, and one on the Sisseton-Wahpeton Reservation. Each of the casino properties has expanded their facilities in recent years to diversify their operations and attract more customers.

During the biennium our division provided assistance to the FBI, US Attorney's Office, the Office of Inspector General, and the Internal Revenue Service with an investigation of former tribal leaders and executives at the Turtle Mountain Band of Chippewa Indians. Although none of the charges was for thefts directly from the casino, the investigation was initiated because of suspected false invoices being generated from another tribally owned business and billed to the casino. Casino personnel discovered the invoices and reported them to our office.

Five individuals were indicted and convicted or plead guilty to various charges of theft or misappropriations of tribal funds. The defendants were sentenced from one to five years in federal prison and ordered to pay restitution of over \$500,000.

CRIMINAL AND REGULATORY DIVISION

The Criminal and Regulatory Division conducts research on legal issues for local prosecutors and law enforcement officials, and conducts or assists in the prosecution of criminal cases when requested by a local state's attorney. During the 2001-2003 biennium, the Criminal and Regulatory Division employed three attorneys.

The division provides legal services to various state agencies and officials, including the Department of Corrections and Rehabilitation, the North Dakota Highway Patrol, the Bureau of Criminal Investigation, and the Gaming and Consumer Protection divisions. The division also serves as legal advisor in alcoholic beverage licensing issues for the division's licensing section. The division's work includes the initiation and prosecution of enforcement actions for gaming and alcoholic beverage administrative rule and statutory violations, assistance in, and coordination of, criminal investigations, and participation in administrative hearings and state and federal court actions, including habeas corpus proceedings.

The division also assists state's attorneys and city attorneys, state and local law enforcement agencies, and other state agencies in the prosecution of criminal offenses. This past biennium, the division handled a wide variety of felony and misdemeanor criminal prosecutions, including child sexual abuse, theft, drug, and various sex offenses. In addition, the division prosecuted, with assistance of gaming division staff, the gaming manager of a licensed gaming organization for a theft in excess of \$600,000 from the organization's gaming proceeds. The division also defended the constitutionality of state statutes in state and federal courts, including the successful defense of the DNA database and luring by computer laws.

The Attorney General's Criminal and Regulatory Division process all extradition requests received by the Governor. During the biennium, there were 118 extradition requests processed.

Conducting extensive law enforcement training and preparing resource materials for state and local law enforcement officials are others functions of the division. The *Attorney General's Law Report* was prepared for distribution throughout the state and included on the Attorney General's website to apprise persons involved in the criminal justice field of recent court decisions and developments. The division also worked closely with state and local law enforcement agencies in the implementation of 2003 legislative enactments involving criminal justice and corrections issues.

LICENSING SECTION

The Attorney General is responsible for regulating the licenses of certain North Dakota industries and activities through the licensing section. The licensing section employed a licensing administrator and one staff member. The section issues licenses to: alcoholic beverage retailers; wholesale and retail tobacco product dealers; transient merchants; coin-operated amusement devices operators, lessors, and distributors; fair boards; polygraph operators; charitable gaming operators; gaming manufacturers and distributors; and wholesale fireworks distributors. Total licensing revenue deposited by the licensing section was \$37,780,853.30. An analysis of licensing activity can be found at Appendix F.

CONSUMER PROTECTION AND ANTITRUST DIVISION

The Attorney General's Consumer Protection and Antitrust Division ("CPAT") enforces the state's consumer fraud laws that prohibit misleading and deceptive practices in connection with the sale or advertisement of merchandise. The division investigates and prosecutes consumer fraud cases, mediates individual consumer complaints, and educates the public on how to avoid becoming victims of fraud. It is also responsible for antitrust enforcement, including investigations and legal actions. In addition, when in the public interest, CPAT conducts investigations and legal actions for violations of the nonprofit corporations laws. During the biennium, CPAT opened 2,306 complaints and investigations and closed 2,594 files. The division recovered \$826,019 in consumer restitution, collected an additional \$1,171,600 in other legal recoveries, and collected \$648,013 in fines and costs in approximately 26 civil actions.

The Consumer Protection Division emphasizes public education to prevent and combat consumer fraud. The eight-member staff made 79 public appearances discussing consumer fraud issues. In addition, CPAT initiates and coordinates numerous efforts to educate consumers through the media. These efforts include the production of a weekly newspaper column entitled "Too Good To Be True" that is printed in newspapers throughout the state; issuing news releases and consumer alerts; and participating in frequent radio programs and television appearances throughout the state to talk about current consumer scams.

The Attorney General is committed to providing a statewide coordinated approach to ensure that all North Dakota students are given the opportunity to develop the basic consumer and financial skills necessary for responsible citizenship. The division continued its participation in the National Consumer League's "LifeSmarts" competition, a game show type competition that tests students' consumer knowledge or skills in the areas of finance, health, safety and the environment. All North Dakota schools offering grades 9-12 are invited to participate in an online competition to qualify for the state competition. Twelve finalist teams then compete in the state competition. The Attorney General hosted the sixth and seventh state LifeSmarts competitions. The 2002 winning team participated in the national LifeSmarts competition in Arlington, Virginia, and the 2003 winning team participated in the national LifeSmarts competition in Lake Buena Vista, Florida.

SIGNIFICANT LEGAL ACTIONS

The Office of Attorney General through CPAT pursued several actions in state court against individuals or entities under state consumer protection laws. The following is a brief description of some of the division's in-state investigations or legal actions completed during this biennium:

- **Aid, Inc.** – Obtained an Assurance of Voluntary Compliance (AVC) against respondent requiring more supervision of staff and finances by the organization in its practice as a charitable organization.

- **Burton, Dennis dba Pioneer Buildings** – Obtained AVC against steel building salesman prohibiting Mr. Burton from independent sales in North Dakota. During six months following execution of AVC, obtained approximately \$84,024 in cash restitution that our office distributed to consumers in North Dakota, Nebraska, Minnesota, and South Dakota and obtained delivery of product to consumers in the approximate amount of \$16,000.
- **DVO/SFRC (Dan Murray)** – Obtained an AVC against the respondent for alleged deceptive practices in regard to vacuum cleaner sales. Collected civil penalties in the amount of \$2,000.
- **Holte Construction, Inc., and Perry Holte Individually** – Obtained a consumer fraud judgment against the defendants for engaging in misrepresentations at the time of home sale closings by assuring consumers that all liens and encumbrances for subcontractors and suppliers had been paid when, in fact, defendants failed to pay such obligations. Awarded \$10,000 in civil penalties and obtained restitution for homeowners.
- **Huft, Jack dba Basic Heating, Air & Complete Mobile Home Repair** – Obtained a preliminary injunction prohibiting the defendant from engaging in business pending resolution of a consumer fraud action initiated by the Attorney General. Obtained final consumer fraud judgment against the defendant for engaging in deceptive practices including misrepresenting that he was a licensed plumber and the contact amount. Awarded \$2,935 in restitution, \$1,000 in civil penalties and \$500 in attorney's fees.
- **Pelster, Kirt** – Obtained an AVC against the respondent for alleged deceptive practices in regard to vacuum cleaner sales, providing for payment of \$3,000 in restitution.
- **Schwandt, Andy dba Venture Auto Sports** – Initiated a consumer fraud action against the defendant for engaging in deceptive acts or practices in which the business solicited and accepted advance deposits for the sale of "Hummer-like" motor vehicle kits and failed to deliver. Obtained a consumer fraud judgment in bankruptcy proceedings awarding \$92,989 in restitution, \$10,000 in civil penalties, and \$5,000 in attorney's fees.
- **Sunset Memorial Gardens of Bismarck, Inc.** – Initiated and participated jointly with the Securities Commissioner and the organization's board of directors in efforts to address and resolve the nonprofit cemetery's financial problems for deficiencies in merchandise trust and perpetual care trust accounts due to the prior cemetery director's mismanagement of those trust accounts. These regulatory efforts resulted in an agreement with a private management company to operate the cemetery under contract with the nonprofit organization's board of directors and obtained full payment of approximately \$111,600 for the merchandise trust account

delinquency in the approximate amount of \$103,000 and the perpetual trust account delinquency in the approximate amount of \$8,600.

- **Thompson, Robert dba Bob's Pawn Shop** – Obtained a judgment against defendant for engaging in usurious loans. Obtained restitution for consumers in the amount of \$27,060, civil penalties in the amount of \$1,000 and attorney's fees in the amount of \$500.

The Office of Attorney General through CPAT also participated in several multi-state actions. The attorneys general of several states, including the North Dakota Attorney General, usually bring these actions. Judgment or settlement proceeds from these cases are shared by the participating states. The State of North Dakota participated in, among others, the following multi-state actions during the biennium.

- **AT&T, Sprint & MCI** – Obtained AVC with these respondents for long-distance telecommunications advertising practices. Obtained total payment of \$35,000 in lieu of civil penalties.
- **Bridgestone/Firestone** – Obtained a consent judgment against the defendant for alleged deceptive advertising practices in the sale of tires. Obtained payment for the state of North Dakota in the amount of \$527,500 in lieu of civil penalties, as well as replacement of defective tires for North Dakota consumers.
- **Buspar** – Obtained settlement agreement from drug manufacturer providing for restitution for individual Buspar users through claim process and for North Dakota state agencies, including DHS (Medicaid), DOC, State Hospital, and Workers Compensation, in the approximate amount of \$175,000, and reimbursement of attorneys fees and costs in the approximate amount of \$60,000. Final amounts and distribution of settlement proceeds is pending until final court approval.
- **Citibank** – Obtained an AVC in regard to sale of customer information. Obtained payment of \$40,000 in lieu of civil penalties.
- **Compact Disc** – Obtained settlement agreement from recorded music distributors providing for cash restitution through a claim process for individual recorded music purchasers in the approximate amount of \$13 per individual claimant and product restitution in the form of compact discs in the approximate amount of \$112,200 that will be distributed to schools and libraries in the state. Final amounts and distribution of settlement proceeds is pending until final court approval.
- **Disposable Contact Lens** – Obtained a judgment against defendants in antitrust action in regard to anti-competitive practices. Obtained payment in the amount of \$25,930.
- **Echostar** – In joint effort with Department of Justice, successfully challenged proposed merger of satellite programming providers that, if consummated, would

have left many North Dakota consumers with a single company as their sole source of television broadcast.

- **First USA Bank** – Obtained an AVC in regard to sale of customer information. Obtained payment of \$26,041 in lieu of civil penalties.
- **Ford** – Obtained a consent judgment against the defendant for alleged deceptive advertising practices. Obtained payment for the state of North Dakota in the amount of \$300,000 in lieu of civil penalties.
- **Household** – Obtained a consent judgment against the defendant in regard to disclosure in lending practices. Obtained payment of \$75,000 in lieu of civil penalties.
- **Oracle/Peoplesoft** – (Matter still pending) In joint effort with DOJ, investigating proposed merger of enterprise software companies, one of whom, via a recent procurement, provides most of the operating software for IT and higher education in North Dakota.
- **Taxol** – Obtained settlement agreement from drug manufacturer providing for restitution for individual Buspar users through claim process and for North Dakota DHS (Medicaid) in the approximate amount of \$90,000, and reimbursement of attorney fees and costs in the approximate amount of \$20,000. Final amounts and distribution of settlement proceeds is pending until final court approval.
- **Vitamins** – Obtained in an antitrust matter a recovery of \$643,000 for North Dakota in regard to the sales of vitamins.

CIVIL LITIGATION DIVISION

The Civil Litigation Division represents state agencies, officials, and employees in legal actions, including administrative hearings, state court lawsuits, federal court lawsuits, and appeals. The Attorney General and Civil Litigation Division attorneys handle cases ranging from challenges to the constitutionality of state laws to collection actions for various state agencies. The Division strives to ensure North Dakota laws are upheld and protects the interests of the State of North Dakota in the courts. From time to time, the Division also becomes involved in legislative matters, when those matters are closely related to the Division's primary responsibilities. During the biennium the Division was staffed by an average of seven full-time attorneys, one half-time attorney, and two full-time paralegals. From July 1, 2001, through June 30, 2003, Division attorneys participated in 26 arguments before the North Dakota Supreme Court, 3 arguments in the United States Court of Appeals for the Eighth Circuit, and numerous arguments in other courts and administrative proceedings.

BANK OF NORTH DAKOTA

The Attorney General represents the Bank of North Dakota in cases seeking to recover bank loan money or property from delinquent borrowers and to collect overdue student loans. During the biennium Civil Litigation Division legal staff represented the Bank in 56 home loan foreclosures, 12 home loan bankruptcies, 71 farm loan foreclosures, 14 farm bankruptcy cases, 13 student loan bankruptcy cases, and 52 collection actions. Through its efforts this biennium, the Office of Attorney General collected \$3,453,331 for the Bank.

DEPARTMENT OF CORRECTIONS & REHABILITATION/STATE PENITENTIARY

The Office of Attorney General represents the North Dakota State Penitentiary and penitentiary employees in state and federal court cases involving inmates' allegations of unlawful conduct by prison officials, including challenges to prison policies and civil rights actions. During the past biennium, Civil Litigation Division staff attorneys handled approximately 18 such cases.

During the biennium, a notable case involving the Department of Corrections was argued at the Eighth Circuit Court of Appeals. An inmate sued the Director of Medical Services at the Penitentiary for deliberate indifference to serious medical needs, an Eighth Amendment violation. The inmate claimed the Director failed to provide him with a continuous positive air pressure (CPAP) machine to treat his sleep apnea for about one month. The Director, however, was following the prison physician's orders that a CPAP machine was not necessary. The Director filed a motion for summary judgment on the grounds of qualified immunity, which holds a defendant is not liable if it is not clearly established that the defendant's action violated the constitution. The federal district court denied the Director's motion. On appeal, the Director argued that the law was not clearly established that prison officials are not entitled to rely on the treatment orders of prison physicians. The Eighth Circuit agreed, and reversed the Order denying summary judgment.

DEPARTMENT OF HUMAN SERVICES

The Office of Attorney General represents the Department of Human Services in legal actions involving the Department's programs, including medical assistance, Aid to Families with Dependent Children, food stamps, daycare and foster care licensure, fuel assistance, and child protective services. During the biennium Civil Litigation Division attorneys represented DHS in approximately 194 cases. This included cases heard by the state district courts and cases heard by the North Dakota Supreme Court. The balance of the cases were handled or resolved at the administrative hearing level.

During the biennium, civil litigation division staff represented the North Dakota Department of Human Services in an action brought in federal district court to overturn the federal Department of Health and Human Services Departmental Appeals Board's adverse decision on the federal reimbursement rate for Indian Health Services' (IHS) referred services. In a significant decision, the federal court agreed with the state's position,

holding that the Department of Health and Human Services had incorrectly interpreted the federal statute providing for 100% federal participation for IHS' services to limit those services to only services provided at an IHS facility, rather than the clear meaning that it was to be for services that were provided "through" an IHS facility, including services that were referred to non-IHS providers. Not only does this permit the North Dakota Department of Human Services to collect considerable funds for the State share of payment for these services, but the district court also enjoined the federal agency from implementing the policy further.

DEPARTMENT OF TRANSPORTATION

Civil Litigation Division attorneys represent the Department of Transportation in a variety of cases, including implied consent, drivers license, condemnation, competitive bidding, discrimination, quiet title, railroad crossing, and contract cases. During the biennium, Division staff was involved in 215 district court and 17 North Dakota Supreme Court appeals relating to drivers licenses, as well as other cases on behalf of the Department.

EMPLOYMENT

Job Service

During the biennium, Division attorneys represented Job Service in 26 state district court and 2 North Dakota Supreme Court appeals involving grants or denials of unemployment benefits. Also during the biennium, staff attorneys issued 622 unemployment tax complaints against employers who owed payments to Job Service, resulting in 321 judgments and the recovery of \$1,415,729.02. Division attorneys also took legal action to recover employee benefit overpayments in 1,652 cases, resulting in 680 judgments and collection of an additional \$729,546.58. This represents more than an 83% increase in dollars recovered in the previous biennium.

Labor

The Office of Attorney General represents the Labor Department in suits against employers who have failed to pay their employees. Only the most difficult wage claim cases are referred to the Attorney General. During the biennium, Civil Litigation Division staff handled 21 wage claim cases involving 52 individual employees, recovering over \$32,400 for those employees.

Personnel

The Attorney General defends state agencies in their role as employers. As well as representing state agencies in state and federal court in employment cases, staff attorneys also defend state agencies in matters appealed through the Central Personnel Division. Staff attorneys also give general legal advice on such topics as the Americans with Disabilities Act, Family Medical Leave Act, and the Fair Labor Standards Act.

PROFESSIONAL LICENSING BOARDS AND COMMISSIONS

Civil Litigation Division attorneys represent numerous state professional licensing boards and commissions in a variety of cases, including appeals from the denial of applications, and disciplinary actions. Most cases are handled or resolved at the administrative hearing stage, although some administrative decisions are appealed to the district court for review where division attorneys also handle those appeals.

RISK MANAGEMENT FUND

Chapter 32-12.2, N.D.C.C., creates a self-retention program, the State's Risk Management Fund, administered by the Office of Management and Budget. Division staff provides general counsel advice to the Risk Management Fund.

Division staff also represents the State Risk Management Fund in litigation. During the biennium, 452 new claims were filed with the Risk Management Fund. Division staff assisted the State Risk Manager in responding to and resolving many of the claims. Division staff also defended the Risk Management Fund in 32 lawsuits filed during the biennium, as well as lawsuits existing from the prior biennium.

At the North Dakota Supreme Court, Division staff assisted in defending the constitutionality of N.D.C.C. ch. 53-08, which provides limited liability for owners of recreational lands, including the State and its political subdivisions. The Civil Litigation Division successfully defended the constitutional challenge,

OTHER SIGNIFICANT CASES OR MATTERS

In a special session, which convened on November 26, 2001, the North Dakota Legislative Assembly passed a redistricting bill, which amended N.D.C.C. § 54-03-01.8. A state senator filed a petition, requesting the North Dakota Supreme Court exercise its original jurisdiction and find the redistricting bill unconstitutional because it truncated his four year term. The Civil Litigation Division successfully defended the legislature's authority to truncate a senator's term when necessary to further constitutional mandates for redistricting, establishing important constitutional precedent.

Division staff is currently involved in federal and state litigation to protect donations made to the Anne Carlson Center for Children and local nursing homes. The plaintiff brought an action in federal court to prevent the Attorney General from pursuing relief in state court. The federal district court agreed with the Attorney General, and dismissed the federal action for lack of subject matter jurisdiction. Plaintiff has appealed that decision to the Eighth Circuit Court of Appeals.

Meanwhile, the Attorney General sought relief through the state court. The district court, however, dismissed the state's suit for failure to state a claim upon which relief can be granted. The dismissal has been appealed to the North Dakota Supreme Court. On appeal, the state argues the complaint adequately alleges plaintiff's course of conduct and

its representations induced persons in the local communities to invest (donate) in the nursing homes and that those allegations sufficiently allege a constructive trust.

Amicus Curiae Involvement

Amicus curiae -- or “friend of the court” -- briefs are filed by a state or other entity in a pending court case in which it is not a party. The briefs are designed to provide the court with information or a perspective that should be considered in the court's decision but that might not be presented to the court by the parties to the case. The Civil Litigation Division monitors the requests the State receives from the attorneys general of other states or other entities to write or join these amicus briefs.

During the 2001-2003 biennium, the Office of Attorney General received 189 requests to write or join briefs amicus curiae, the majority of the briefs being filed in the United States Supreme Court. The Office of Attorney General joined or wrote briefs in 53 of these cases, including 33 United States Supreme Court cases.

MSA and NPM Statute Enforcement

In November 1998, the Attorney General joined 45 other states and 5 territories in a settlement agreement against the nations largest tobacco manufacturers. The Master Settlement Agreement (MSA) includes base payments to states totaling 220.6 billion for the next 25 years, and continues in perpetuity. North Dakota's share of the settlement is expected to be 866 million over the next 25 years. The amount of the annual payment is subject to a number of modifications including adjustments for inflation and usage volumes. Some of the adjustments may result in increases in the payments (inflation, for example), and other adjustments will likely cause decreases in the payments (volume adjustments, for example). At the end of the biennium, the State had received \$106,231,329.66 in settlement payments.

The MSA provides for a Non-Participating Manufacturer (NPM) Adjustment. The NPM Adjustment applies if the Original Participating Manufacturers lose market share and it is determined, by an accounting firm, that the provisions of the MSA were a significant factor contributing to the market share loss. The NPM Adjustment, however, does not apply to a state that had a Qualifying Statute in effect and diligently enforced the provisions of the statute. Chapter 51-25, N.D.C.C., adopted by the 1999 Legislative Assembly, is a qualifying statute. The statute basically requires the NPMs to pay funds into an escrow account based upon the number of cigarettes sold in North Dakota.

During the biennium, Civil Litigation Division staff spent substantial time enforcing N.D.C.C. ch. 51-25. In many cases, after appropriate communications and documentation, the NPM complied with the statute. A number of lawsuits, however, were filed against non-complying NPMs. The staff also defended and assisted in lawsuits challenging the MSA and Qualifying Statutes. To date North Dakota and the other states have been successful in defending all challenges to the MSA and Qualifying Statutes.

NATURAL RESOURCES AND INDIAN AFFAIRS DIVISION

North Dakota's natural resources are vital to the State's economy and to the lifestyle and well-being of its people. The Attorney General, as a member of boards that oversee natural resources, plays an important role in their wise use and development. In addition, the Attorney General and the Division of Natural Resources and Indian Affairs provide legal advice to state agencies with responsibilities for these resources. The Division, comprised of five lawyers and a legal assistant, assists the Land Department in managing state-owned lands and minerals; the State Engineer in regulating the appropriation of water, regulating dams, dikes, and drains, and managing the beds of navigable rivers and lakes; the Industrial Commission in regulating the exploration and development of oil and gas and administering its lignite grant program; the Health Department in protecting our environment; the Game and Fish Department in managing wildlife and wildlife habitat; the Water Commission in developing and conserving water resources; and the Parks and Recreation Department in managing public recreation areas. The Division also holds the agricultural law portfolio and represents all ag-related agencies. Lastly, the Division handles Indian law issues that confront state agencies as well as local officials.

ENVIRONMENTAL PROTECTION

During the biennium, the Division assisted the Department of Health with its environmental enforcement actions and helped negotiate numerous settlements involving air pollution control, asbestos abatement, water pollution control, solid waste management, and hazardous waste management. Negotiated settlements of pollution control violations required payment of significant civil penalties to the state with additional penalties suspended, based on environmental compliance. Resolution of enforcement actions often involved supplemental environmental projects designed to enhance and protect health and the environment.

One of the most significant environmental matters in which the Division has been involved concerns a serious fuel spill under downtown Mandan. The problem has created a number of legal issues, many of which are complex. The Division has filed an administrative and a judicial action against the Burlington Northern Santa Fe Railroad, both of which are pending. The Division assisted the Health Department to reach a settlement agreement with the Canadian Pacific Railway over a January 2002 anhydrous ammonia spill near Minot. The Railway agreed to pay a \$425,000 fine and contribute \$500,000 for a water project in the area affected by the spill. A multistate action against the Archer Daniels Midland Company was settled for about \$220,000. A significant matter on which the Division worked closely with the Health Department and Governor's Office involves the Environmental Protection Agency's interpretation and application of the Clean Air Act to North Dakota and its power plants.

WATER

The Division, besides handling the day-to-day legal work concerning North Dakota's water resources, was deeply involved in a number of unique issues. Because of the way in which the Corps of Engineers' manages the Missouri River, the Division filed suits against the Corps in 2002 and again in 2003. Both suits saved the spring smelt spawn from destruction and helped preserve Lake Sakakawea's walleye fishery. Other suits have been filed by other interests along the river, in which North Dakota is a named defendant or in which the Division's motions on behalf of the state to intervene have been granted. All of the Missouri River cases remain pending. The Division also spent considerable time assisting state agencies dealing with Devils Lake flooding and the proposal to build an outlet from the lake to the Sheyenne River. The outlet idea provoked intrastate, interstate, and international comment.

The Division represents the state in a lawsuit brought by landowners in the Devils Lake area. The landowners claim damages by Devils Lake's high water and assert that the state and local water resource districts are responsible for the flooding. The litigation is in the discovery phase.

During the biennium the Division represented the state engineer in enforcement actions involving water appropriations and the water commission in its construction of the Southwest Water Pipeline Project and the Northwest Area Water Supply Project ("NAWS"). When the Province of Manitoba sued the Department of the Interior to stop the NAWS project, the state successfully intervened in the action and has filed a motion asking that Manitoba's suit be dismissed for lack of jurisdiction. The motion is pending.

SOVEREIGN LANDS

The Division assisted the state engineer in addressing title and management issues that arose with the continual rise of Devils Lake. It also advised the state engineer in disputes between members of the public wanting to use sovereign lands -- the beds and banks navigable waters -- and riparian landowners who assert an interest in these lands.

AGRICULTURAL LAW

The Division assisted the Agriculture Department in administering its many laws governing dairy operations, pesticide applications, meat inspection, noxious weeds, apiaries, livestock, and other areas. The Division represented the Department in numerous pesticide and livestock dealer enforcement actions, and in judicial actions involving the insolvency of a livestock auction market and in one involving the State Seed Department. The Division advised Project Safe Seed, the Agriculture Department's pesticide collection and disposal program, and it provided legal advice to about two dozen ag-related agencies, such as the Wheat Commission and State Seed Department.

ENERGY

As a member of the Industrial Commission, the Attorney General plays a vital role in ensuring that the oil and gas industry complies with the law governing the exploration and recovery of oil and gas. The Division of Natural Resources and Indian Affairs presided over several hundred of the Industrial Commission's oil and gas administrative hearings and provided advice on the decisions in these cases. None of the Commission's decisions in these cases were appealed to the courts. The Division assisted the Commission in administrative enforcement actions and judicial actions against operators to ensure compliance with oil and gas statutes and regulations. The Division also advises the Industrial Commission in administering the Lignite Research, Development, and Marketing Program and in furthering the objectives of the Lignite Vision 21 Program, a state grant program to develop new power plants.

STATE LAND AND MINERALS

As a member of the Board of University & School Lands, the Attorney General helps manage approximately 712,000 acres of state-owned land and 1.8 million acres of state-owned minerals. Income generated from these resources supports the education of the state's children. The Division assisted the Land Board with the many property law questions and lessor/lessee problems that arise in managing this amount of land and minerals. The Division also assisted the Board in drafting contracts with its investment banks and advisers.

INDIAN ISSUES

During the biennium, state agencies and local officials were confronted with complex issues involving North Dakota's Indian tribes. The Division of Natural Resources and Indian Affairs provided legal advice on such issues as the role of state law enforcement officers on reservations, the extent of the state's regulatory jurisdiction over activities on reservations, and the boundaries of the Spirit Lake and the Ft. Berthold Indian Reservations.

The Division successfully defended the state in a suit brought by the Spirit Lake Nation asserting title to Devils Lake. The Eighth Circuit Court of Appeal affirmed the District Court's decision dismissing the tribe's suit. The Court of Appeals denied the tribe's petition for rehearing and the Supreme Court denied the tribe's petition for certiorari. The Division filed an amicus brief with the North Dakota Supreme Court supporting a local flood control project being challenged by the Turtle Mt. Band of Chippewa. It filed an amicus brief with the Eighth Circuit Court of Appeals supporting the federal prosecution of a crime committed on the Ft. Berthold Reservation. In each case the courts ruled in favor of the position supported by the state.

The Division contributed to the 2002 Supplement to the Conference of Western Attorneys General American Indian Law Deskbook. In addition, it drafted a chapter and served on

the editorial board for the Third Edition of the Deskbook, which will be published in early 2004.

GAME AND FISH

The Division provided significant assistance in getting the Game & Fish Department's "PLI," or private lands initiative, off the ground. The program provides money to landowners who in return allow the Department to develop wildlife habitat on the private land and who grant the public hunting access to that land. The Division advised the Department in handling many hunting and landowner "rights" issues, including an action filed by a landowner challenging the constitutionality of the state's "open unless posted" hunting law. It has also assisted the Department in implementing new legislation that regulates commercial guides and outfitters and in bringing various enforcement actions.

CORPORATE FARMING

The Division is responsible for enforcing the state's corporate farming law. Questions about the law's constitutionality and its proper interpretation have increased as a result of more land purchases for recreational purposes and for large-scaled confined livestock feeding facilities.

NATIONAL GRASSLANDS

The United States Forest Service has taken a number of significant management initiatives affecting the Little Missouri and Sheyenne River National Grasslands. The Division has been active in monitoring these events and submitted formal comments on some of them, such as proposed revisions to the Grasslands Management Plan and the proposal to designate the Little Missouri River as a wild and scenic river. The Division filed suit challenging the Forest Service's "off-highway vehicle" policy, its roadless rule, and its failure to recognize the applicability of the state's section line right-of-way law to federal land. The suit remains pending.

STATE AND LOCAL GOVERNMENT DIVISION

The ten full-time attorneys, one half-time attorney, and one half-time legal assistant in the State and Local Government Division provide day-to-day legal services to 66 state agencies, boards, and commissions. By providing consistent oral and written legal advice, reviewing documents and contracts, and being available for consultation and legal research, the attorneys assist agencies in applying the law consistently and fairly, and help to prevent legal problems from arising.

GENERAL FUNCTIONS

The State and Local division provides a myriad of services including:

- **Administrative Rule Review.** By statute the Office of Attorney General must review all administrative rules promulgated by state agencies and boards for legal sufficiency and ensure that proper procedures have been followed. The office reviewed 96 sets of rules during the biennium.
- **Joint Powers Agreements.** The division reviewed all joint powers agreements involving the state or state agencies prior to their execution.
- **Bond Counsel Services.** Division staff also participated in and delivered Issuer's Counsel Opinions on each bond transaction generated by every state agency, other than some for the State Board of Higher Education.
- **Legislative Advisory Services.** During the 2003 Legislative Session, attorneys from the division assisted agencies and members of the Legislative Assembly by drafting bills and amendments, explaining the ramifications of proposed legislation and testifying before legislative committees when requested.
- **Legal Opinions.** The Attorney General is frequently asked for legal opinions by state legislators, state officials, county state's attorneys, city attorneys, city governing bodies, water resource boards and soil conservation districts. These opinions guide the actions of public officials until the courts decide the issue. During this biennium the Attorney General issued 152 opinions, up from 133 opinions last biennium. The Attorney General issued 48 opinions to legislators, 45 to state's attorneys, 25 to city attorneys, 31 to state agencies and 3 to other entities. The Attorney General issued an additional 31 opinions to public entities at the request of members of the public or media regarding alleged violations of the open records/open meetings laws.

OPEN RECORDS AND OPEN MEETINGS

Since 1997, the open records and open meetings laws have authorized the Attorney General to issue opinions to public entities in response to a complaint by a member of the public, including representatives of the media, that the public entity had violated the open records or open meetings law. This form of administrative review has proven to be an effective vehicle to remedy violations of the open records and meetings law. Between July 1, 2001, and June 30, 2003, the office issued 31 opinions, up from 22 opinions issued last biennium, based on alleged violations of the open records or open meetings laws. The division also handled a large number of telephone calls from public entities and citizens regarding open records and meetings requirements. Responding over the telephone in many cases eliminated possible violations or opinion requests.

SIGNIFICANT ATTORNEY GENERAL OPINIONS

All Attorney General opinions issued since January 1, 1993, are posted on the Office of Attorney General's home page at <http://www.ag.state.nd.us>. The Open Records/Open Meetings Manual is also available on the home page.

- A board of county commissioners may not hire a private attorney to represent the board without first obtaining the advice and consent of the county state's attorney. 2001-L-37
- If a real estate broker knows a meth lab was located on real property, the broker must disclose this fact to potential purchasers so they may make the appropriate inquiry under NDCC 23-20.3-11 to protect themselves from potential liability for cleanup of hazardous waste on the property. 2001-L-51
- A school board may not hold an executive session to discuss general personnel issues. 2001-O-09
- The Minot Area Development Corporation is a "public entity" subject to the state's open records and meetings laws because it receives public funds for its general support and performs a government function (promoting the city to encourage economic development). 2001-O-10
- The Fargo-Cass County Economic Development Corporation is a "public entity" subject to the state's open records and meetings laws because it is supported by public funds and performs a governmental function for the city (providing economic development services). 2001-O-11
- In order for a public entity to hold an executive session for attorney consultation regarding reasonably predictable litigation or adversarial administrative proceedings, a governing body must show more than a fear or potential of being a party to litigation or an administrative proceeding; the possibility of litigation or a proceeding by or against the governing body must be realistic and tangible. 2001-O-15
- North Dakota state institutions of higher education may place student teachers in parochial schools in accordance with an appropriate placement policy without violating the United States constitution. 2002-F-05.
- A county without home rule authority may not donate money to a nonprofit corporation to defray the costs of a Fourth of July celebration. 2002-F-09.
- The requirement to provide a social security number on a marriage license application does not apply to persons who do not have a social security number. 2002-F-10.

- An attorney provided by the North Dakota Insurance Reserve Fund to represent a county must be appointed by the state's attorney as an assistant state's attorney. 2002-L-10.
- An elected sheriff may take personal time away from his office but may not declare that he or she is off duty and not obligated to perform that sheriff's legal responsibilities as an elected official. 2002-L-16.
- Neither N.D.C.C. § 15.1-06-09 nor other law provides for ordering school closure or reduction in per-student aid for schools because of noncompliance with relevant fire codes. 2002-L-30.
- Gaming on Lake Sakakawea by the Three Affiliated Tribes could only occur if its compact was amended to so allow. The Governor is prohibited by state law from negotiating an amendment that would allow off-reservation gaming. 2002-L-47.
- Public officials may not spend public funds to persuade voters to accept a position preferred by them. 2002-L-61.
- A public entity waives its right to invoke the exceptions to the open records and meetings laws for attorney work product or attorney consultation if the public entity allows its adversary to review the work product or attend the consultation. 2002-O-01.
- A public entity receiving an open records request from or on behalf of an adversary to a pending action or adversarial proceeding is entitled to the full scope of the discovery privilege for work product under the rules of civil procedure. 2002-O-05.
- The Minot Chamber of Commerce's Task Force 21, created by the Chamber to retain the Minot Air Force Base, was a public entity subject to the state's open records and meetings laws because it received public funds for its general support and it was acting as an agent of the city to encourage the retention of the Base, which was an economic development function of the city. 2002-O-09.
- The Board of Higher Education, a public entity with statewide jurisdiction, did not violate the open meeting law that requires meetings to be accessible to the public by holding a meeting, at which a Minot State University auditorium's name change was voted on, in Williston. 2002-O-12.
- North Dakota's participation in the Streamlined Sales Tax Project would not violate the Compact Clause of the United States Constitution or the constitution of North Dakota. 2003-L-05

- Under N.D. Const. Art. VII, sec. 5, which prohibits money raised to support public schools from being used to support sectarian schools, public schools may not share their educational technology funds with private/parochial schools. 2003-L-06
- Because the responsibility for confinement costs falls upon the entity that exerts actual, physical dominion and control over the prisoner, a county is liable for the cost of the remedial sanction of incarcerating a person found in contempt of court for failure to pay past due child support. 2003-L-10
- The Cass County sheriff's residence, which the State Historical Society has determined to be a "significant site", may not be destroyed without first obtaining approval from the State Historical Board. The protection of historical sites is a matter of statewide concern and counties do not have the authority under home rule to adopt ordinances varying the protection in state law for those sites. 2003-L-11
- School districts may not use vans, including vans operated under contract, to transport students to schools or school related activities if the vans do not comply with the minimum standards adopted in the Department of Public Instruction's administrative rules. 2003-L-15
- A statute intended to protect child-placing agencies' rights to refuse to provide or participate in activities to which the agencies have moral or religious objections is a constitutionally permissible accommodation of religious and moral beliefs of child-placement agencies. 2003-L-18
- The school board itself must conduct the hearing to expel a student for possessing a firearm on school property or at school functions and may not delegate that responsibility to a hearing officer or school personnel. 2003-L-27
- The James River Senior Citizen's Center is a public entity subject to the state's open records and meetings laws to the extent its records or meetings pertain to mill levy funds it receives from the counties. 2003-O-02
- Because the Disciplinary Board and Judicial Conduct Commission are adjuncts of the North Dakota Supreme Court, their records are court records and they are not subject to the open records law. Records of the Board and the Commission are subject to court rules. 2003-O-06

FINANCE AND ADMINISTRATION DIVISION

The Finance and Administration Division provides administrative and office financial services. The division is responsible for budget, payroll, and accounting matters; information processing; and purchasing and other administrative functions.

During the biennium several division staff members selected as subject matter experts devoted considerable time and effort completing questionnaires, attending meetings, testing, and planning for implementation of the PeopleSoft suite of financial, purchasing, and human resources modules. Some staff members serve on up to eight of the PeopleSoft modules to be implemented on July 1, 2004. Staff members also attended software demonstrations for the PeopleSoft software. The PeopleSoft human resources (some portions) and payroll modules were implemented during this biennium, which resulted in a significant increase in the time needed to process payroll.

As a result of an extensive strategic planning effort, processing issues, and more effective business procedures and policies, efficiencies have been identified, job duties have been reassigned, and several procedures were established or changed to allow the division to complete its work in a more effective manner.

The division participated in testing the new online requisition and procurement programs, both of which are now used. Use of these programs has resulted in a more effective bid and purchase process.

INFORMATION TECHNOLOGY DIVISION

The Information Technology (IT) Division provides information technology services and support to all divisions of the Office of Attorney General. The division has eight full time employees who service and support 5 different locations within Bismarck and 12 other locations across the state. Many of our computer applications have been designed and developed by programmers in the IT Division. Some of these applications are: the criminal history repository, the sex offender registration application, the warrant repository, the protection/restraining order repository, the charitable gaming application, the licensing application, the legal and Consumer Protection mail tracking application, the Consumer Complaint application, the high-risk sex offender web-site, and several others. Many of these applications are critical to law enforcement in the state and information is currently being retrieved through State Radio communications.

Over the last couple of years we have worked heavily with the Criminal Justice Information System (CJIS) program, which is designed to allow the ease of sharing information between criminal justice entities across the state, without having to do that through a teletype machine hooked directly to State Radio. Once this effort is underway information would be available on a regular PC with a Web Browser as long as the individual had the appropriate credentials to access the information.

As well as providing information to state, local and federal law enforcement agencies, the Office of Attorney General also provides a wide variety of services and information to other state agencies, and to North Dakota citizens. The IT Division uses their skills and their knowledge to help the divisions within the office improve their delivery of services. We

work with other state agencies to develop applications that allow the sharing of information in a more-timely manner and to help eliminate duplication of effort.

In past years, the aging and often obsolete applications did not allow us to easily share information between our own divisions, let alone other state agencies. About six years ago, we began to rewrite many of our aging applications and we determined to do so, in such a way that it would be easy to share information with whoever required the information. Many of these applications have been rewritten and we are reaping the benefits. Many of our previous manual and tedious processes have been automated.

Several years ago, if a law enforcement agent wanted to obtain warrant information, sex offender information, and driver's license information, he/she would have had to do a separate request for each type of information desired. Now when an officer requests a driver's license check, he will automatically get warrant information, sex-offender information, protection order information and in a few months, notification on whether the individual could potentially have a concealed weapon permit.

Computer applications have required more sophistication in order to meet the business needs of the agency and therefore have become more complex in nature. The IT division must continue to have a highly skilled staff to meet the demands of the agency for providing information to its customers. This requires ongoing training to maintain these skills and to be able to capitalize on new industry technological advances.

Innovation is key to improving services. Our customers are becoming more computer-savvy. They are no longer just receivers of services, but participators in those services and so our web sites must become more interactive, more anticipatory, more customer-focused than ever before, rather than just offering information to be read or downloaded. This means that our customer becomes more of a partner in the things we do, rather than just an observer. Online services where a customer can pay for the service they are receiving and obtain instant or almost instant results are becoming a way of life for many. In some cases, like with homeland security, it is a necessity, in order to preserve our way of life.

There is more information in the world today than ever before. Providing information is no longer enough. We must make sense of the information and be able to extrapolate immense amounts of data into manageable and meaningful information. The IT Division strives to merge information and technology together in order to provide the tools needed to enable the business units to provide quality services to their customers.

ACCOMPLISHMENTS DURING THIS BIENNIUM

- High-Risk Sex Offender Web Site was developed and provides our citizens with information concerning the offenses and addresses of sex offenders who meet the high-risk criteria.

- The Protection/Restraining Order application was rewritten so that protection order information could be more easily shared with other areas. There is some additional work underway with the Supreme Court to enable Protection Orders to be entered before they are served, and then updated when served. Another change will allow a law enforcement to request the full text of the order. This will allow the officer to see the conditions of the order, in order to determine if any violation has occurred.
- Changes were made to our Criminal History Record Check system to allow an ACH transaction in payment of multiple record checks by a non-criminal justice agency.
- The Tax Return Module for the Charitable Gaming application was completed. This was the second module for this completely revamped application. This paves the way to be able to later offer some services online.
- The Complaint Tracking application was rewritten for the Consumer Protection and Antitrust Division. This has enabled the Division to better track complaints, especially for companies who do business under different names, and corporations who have multiple companies. This will enable the CPAT division to provide better information and service to their customers.
- The Mail Tracking application was rewritten. This application is used by the Legal staff and by Consumer Protection. It enables them to track correspondence received by the office and to track information concerning the response if needed to the correspondent.
- We implemented a newer, more complete Project Management Methodology to enable us to more easily manage projects to keep them on-schedule, on-budget and meet the requirements of the customer, whether internal or external.
- The web site of the Office of Attorney General was restructured and redesigned to be more user-friendly and efficient and was changed to meet ADA compliancy as required by state law.
- An intranet was created within the office to enable divisions and their employees to share information internally.
- We participated in many other enterprise level initiatives, such as Continuation of Government (disaster recovery), Enterprise Architecture (EA), CONNECTND (Implementation of Peoplesoft) and Criminal Justice Integrated System (CJIS).

STATE FIRE MARSHAL DIVISION

The Fire Marshal Division's goals are the prevention of fires through education, training, and inspections; provision of assistance in the mitigation of hazardous materials incidents and fire investigations. The division's main office is located in Bismarck and there are four field offices located in Grafton, Fargo, Dickinson, and Minot.

The division conducts fire investigations in conjunction with local fire service personnel and on its own. During the biennium the division conducted 150 fire cause and origin investigations. Of these, arson was determined to be the cause in 27 percent of the investigations.

The division's emphasis on prevention is carried out through public education programs and specialized training. Education programs are conducted to assist citizens in preventing fire and protecting themselves and their families if a fire occurs. The division also provides specialized training in fire prevention, fire scene investigation, and hazardous materials response support.

To enhance the level of fire safety throughout the state, the division conducts fire inspections in public facilities, educational buildings, childcare facilities, state buildings, and at flammable material storage sites. During the biennium, the Fire Marshal staff conducted 254 school inspections, 228 fuel site inspections, 264 state building inspections, 108 hazardous materials/weapons of mass destruction classes (with 3133 students), 59 day care inspections, and 32 assembly inspections.

Nineteen people lost their lives to fire in North Dakota during the biennium. This compares to 17 lives lost in the previous biennium. The National Fire Incident Reporting System (NFIRS) has become operational, and after bringing the backlog of data entry up to date we have begun the process of extracting statewide fire statistical data using the Federal Collector Tool.

Some of the highlights for the division during the biennium were:

- Developed and implemented a system for inspecting state buildings; 264 state buildings were inspected this biennium.
- Improved the level of fire safety in schools that had long-standing deficiencies. Well over 100 schools corrected deficiencies, bringing them into compliance with state fire codes.
- Updated the Fire Chief's Guides and distributed them to 387 fire departments.
- Streamlined the timekeeping coding system, making it possible for the deputies to quickly and accurately add their time records.

- Assisted the State Emergency Response Commission with the development of a brochure for aboveground storage of fuels for farm use.
- Upgraded and improved the Hazardous Materials/Weapons of Mass Destruction training program for statewide distribution and use in training first responders to awareness level.

Office Directory

STATE CAPITOL

600 E Boulevard Ave
Bismarck, ND 58505-0040

Administration

(701) 328-2210
(701) 328-2226 (Fax)

State and Local Government Division

(701) 328-2210
(701) 328-2226 (Fax)

Consumer Protection and Antitrust Division

(701) 328-3404
1-800-472-2600
1-800-366-6888 (TTY)
(701) 328-3535 (Fax)

Gaming Division

(701) 328-4848
1-800-326-9240
(701) 328-3535 (Fax)

Licensing Section

(701) 328-2329
(701) 328-3535 (Fax)

OUTSIDE CAPITOL COMPLEX

Civil Litigation Division

Natural Resources and Indian Affairs Division

500 North 9th Street
Bismarck, ND 58501-4509
(701) 328-3640
(701) 328-4300 (Fax)

Racing Commission

500 North 9th Street
Bismarck, ND 58501-4509
(701) 328-4290

Bureau of Criminal Investigation

PO Box 1054
Bismarck, ND 58502-1054
(701) 328-5500
(701) 328-5510 (Fax)

Drug Hotline

1-800-472-2185

Fire Marshal

PO Box 1054
Bismarck, ND 58502-1054
(701) 328-5555
(701) 328-5510 (Fax)

Information Technology Division

PO Box 1054
Bismarck, ND 58502-1054
(701) 328-5500
(701) 328-5510 (Fax)

APPENDICES

Appendix A - Office of Attorney General 2001-2003 Biennium Expenditures
By Line Item - Total Expenditures \$24,647,765

Appendix B - Office of Attorney General 2001-2003 Biennium Expenditures
By Division – Total Expenditures \$24,647,765

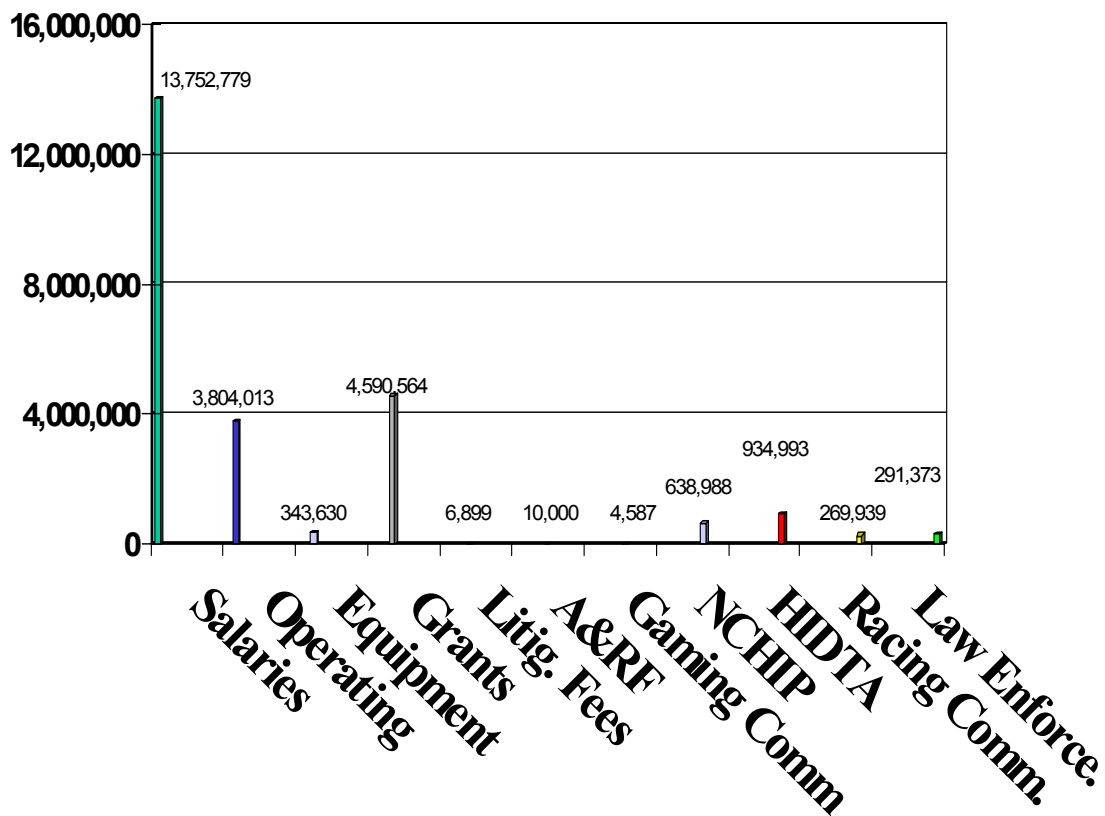
Appendix C - Office of Attorney General 2001-2003 Biennium Expenditures
By Funding Source - Total Expenditures \$24,647,765

Appendix D – Costs Associated with Prosecuting and Defending Actions
On Behalf of the State For the 2001-2003 Biennium

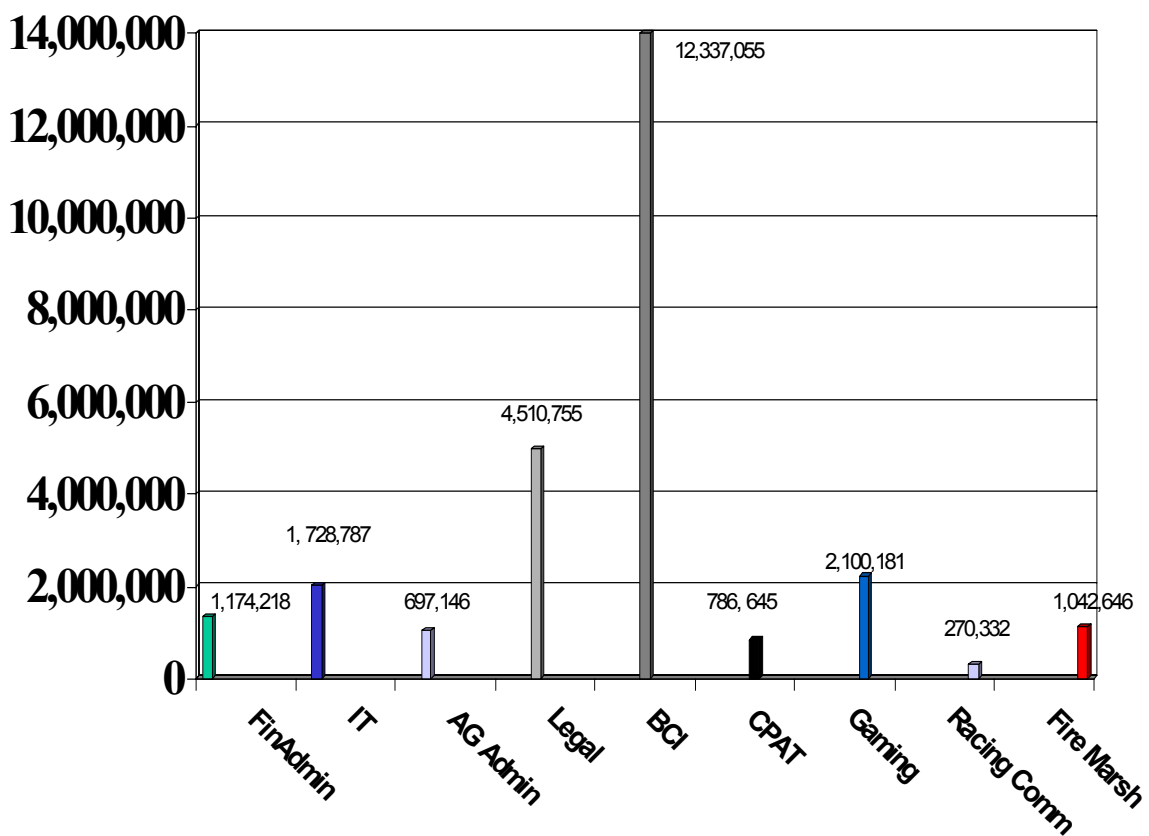
Appendix E – North Dakota Games of Chance
Fiscal Year Ending June 30, 2002
Fiscal Year Ending June 30, 2003

Appendix F - Analysis of Licensing Activity
For the 2001-2003 Biennium

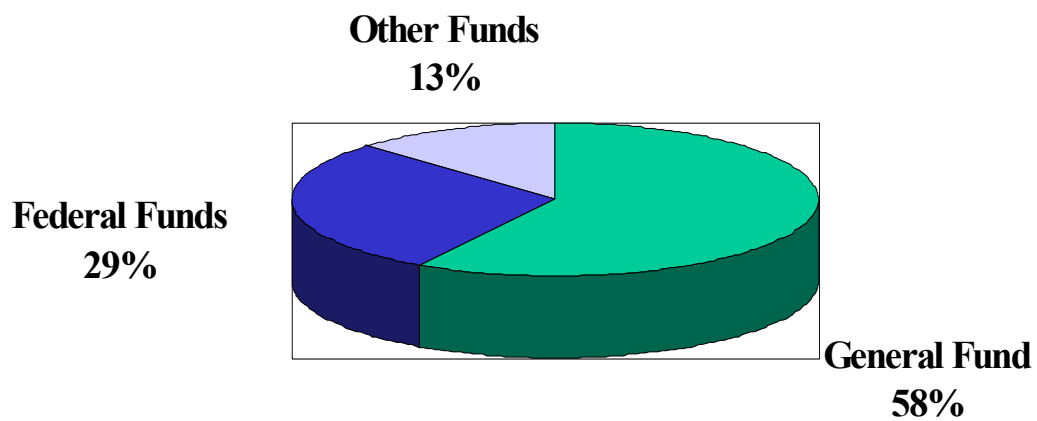
Office of Attorney General
2001-2003 Biennium Expenditures
By Line Item
Total Expenditures \$24,647,765



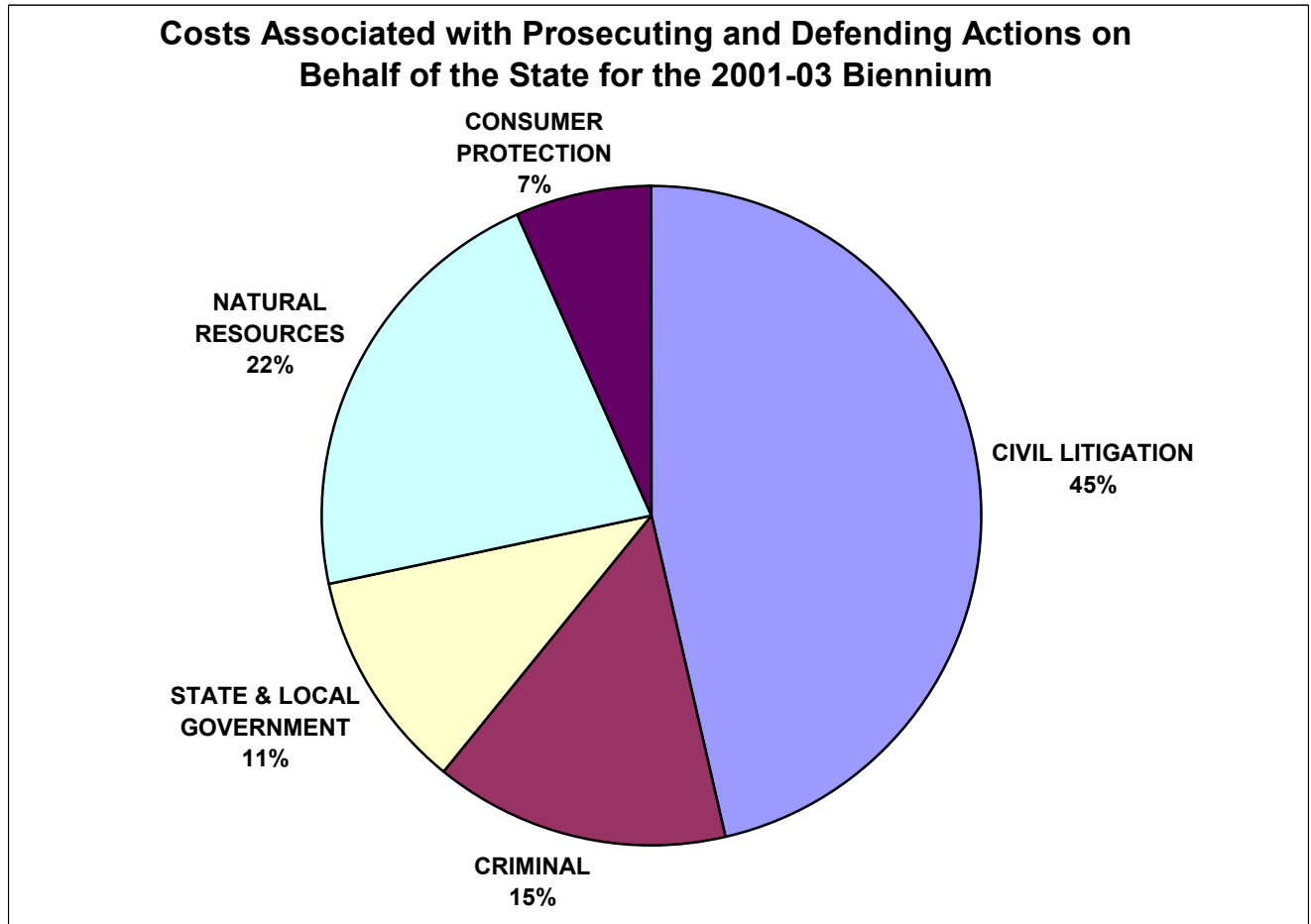
Office of Attorney General
 2001-2003 Biennium Expenditures
 By Division
 Total Expenditures \$24,647,765



Office of Attorney General
2001-2003 Biennium Expenditures
By Funding Source
Total Expenditures \$24,647,765



APPENDIX D



APPENDIX E

North Dakota Games of Chance Gaming Activity

Fiscal Year Ended June 30, 2002

	Gross Proceeds	Prizes	Adjusted Gross Proceeds
Bingo	\$45,386,296	\$34,164,982	\$11,221,314
Bingo (Dispensing Device)	49,426	41,586	7,840
Raffles	3,072,592	1,364,257	1,708,335
Pull Tabs (Jar Bar)	106,930,543	84,754,499	22,176,044
Pull Tabs (Dispensing Device)	49,061,684	38,174,594	10,887,090
Club Specials, Tip Boards, Coin Boards, & Seal Boards	855,729	613,098	242,631
Punchboards	6,460	4,147	2,313
Sports Pools	108,340	86,896	21,444
Twenty-one	60,352,077	50,297,182	10,054,895
Calcuttas	246,452	211,672	34,780
Paddlewheels	70,540	32,970	37,570
Paddlewheels (Table Game)	5,181,886	3,783,875	1,398,011
TOTALS	\$271,322,025	\$213,529,758	\$57,792,267

Plus:	Interest Earned, Cash Long (Short), & Poker	\$74,841
Less:	ND Excise Tax	6,757,856
	Federal Excise Tax	115,380
	Bingo Sales Tax	2,599,751
	Total Adjusted Gross Proceeds	\$48,394,121
Less:	ND Gaming Tax	\$3,639,605
	Allowable Expenses	28,073,494
	Total Deductible Expenses	\$31,713,099
	Net Proceeds Earned	\$16,681,022

Fiscal Year Ended June 30, 2003

	Gross Proceeds	Prizes	Adjusted Gross Proceeds
Bingo	\$45,163,656	\$34,745,507	\$10,418,149
Bingo (Dispensing Device)	45,984	39,739	6,245
Raffles	3,137,011	1,325,790	1,811,221
Pull Tabs (Jar Bar)	105,133,210	83,306,771	21,826,439
Pull Tabs (Dispensing Device)	48,549,035	37,766,028	10,783,007
Club Specials, Tip Boards, Coin Boards, & Seal Boards	932,598	665,226	267,372
Punchboards	17,705	12,188	5,517
Sports Pools	183,767	152,990	30,777
Twenty-one	64,953,734	54,583,497	10,370,237
Calcuttas	263,045	224,573	38,472
Paddlewheels	376,493	282,665	93,828
Paddlewheels (Table Game)	4,551,014	3,384,082	1,166,932
TOTALS	\$273,307,252	\$216,489,056	\$56,818,196

Plus:	Interest Earned, Cash Long (Short), & Poker	\$30,782
Less:	ND Excise Tax	6,576,174
	Federal Excise Tax	107,920
	Bingo Sales Tax	2,590,971
	Total Adjusted Gross Proceeds	\$47,573,913
Less:	ND Gaming Tax	\$3,485,272
	Allowable Expenses	27,708,466
	Total Deductible Expenses	\$31,193,738
	Net Proceeds Earned	\$16,380,175

APPENDIX F

ANALYSIS OF LICENSING ACTIVITY FOR THE 2001-2003 BIENNIUM

TYPE OF LICENSE	NUMBER ISSUED	REVENUE COLLECTED
Beer License	3,091	\$ 240,566
Charitable Gaming Excise Tax	2,373	13,489,451
Cigarette License	4,124	66,550
Coin License	300	118,225
Detection of Deception License	27	1,000
Fair and Fairboard License	19	950
Gaming/Distributor/Manufacturer License	1,402	317,000
Gaming Tax	2,670	7,057,453
Liquor License	2,849	220,600
ND Record Check	3,447	68,957
Transient Merchant License	99	20,000
Wholesale Fireworks License	38	9,500
TOTAL	20,439	\$ 21,610,252